

F07-0157

F09-0688

ORIGINAL

FILED

January 4 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

JOHN D. ALEXANDER
NANCY P. CORY
JORDAN Y. CROSBY
DAVID J. GRUBICH
MARK F. HIGGINS
ROBERT F. JAMES
MARY K. JARACZESKI
CATHY J. LEWIS
KEVIN C. MEEK
MARK D. MEYER
ROGER T. WITT
GARY M. ZADICK

ATTORNEYS AT LAW
#2 RAILROAD SQUARE, SUITE B
P.O. BOX 1746
GREAT FALLS, MONTANA 59403-1746

TELEPHONE
(406)771-0007

FAX
(406)452-9360

E-MAIL
uazh@uazh.com

Website
<http://uazh.com>

NEIL E. UGRIN
1945 - 2007

January 3, 2011

VIA FEDERAL EXPRESS

Mr. Ed Smith
Clerk of the Montana Supreme Court
215 North Sanders
Room 323, Justice Building
P.O. Box 203003
Helena, MT 59620-3003

FILED

JAN 04 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

RE: *Proposed Changes to the Montana Rules of Professional Conduct and Civil Procedure re: limited scope representation*

Dear Mr. Smith:

This letter is written on behalf of the attorneys practicing at Ugrin, Alexander, Zadick & Higgins, P.C. ("UAZH"). UAZH wishes to take this opportunity to provide its comments on the proposed changes to Rules 1.1, 1.2, 4.2, and 4.3 of the Rules of Professional Conduct, Rule 11 of the Montana Rules of Civil Procedure, and the addition of two new Rules of Civil Procedure, 4.2 and 4.3.

UAZH is a litigation firm located in Great Falls, practicing primarily civil defense. UAZH thinks that the Ethics Opinion issued by the State Bar Ethics Committee (101216) addressing the limited scope representation issue offers great insight on the proposed rule changes and joins with the Ethics Committee and others in urging the Court to not adopt the proposed rule changes.

UAZH understands that the stated intent of the proposed change is to encourage limited scope representation "as one means of addressing the unmet legal needs of low to moderate income Montanans." While the goal behind the proposed changes is commendable, UAZH does not believe the goal is best accomplished by the rule changes as proposed. There are already several organizations in Montana that are working hard to assist the needs of low to moderate income Montanans. UAZH would propose that

Mr. Ed Smith

Page 2

rather than changing the rules, more be done by all members of the Bar and the courts to help these organizations both financially and through pro bono services.

Further, it does not appear from the proposed rule changes that the rules are actually drafted to benefit only the intended classes of people. Nowhere is it provided that limited scope representation would be available only to low and moderate income Montanans. UAZH commends and supports those organizations that work hard to fashion ways to provide more legal services to a greater number Montanans. However, adopting the proposed rules will not better serve these individuals' legal needs and may in fact subject those who are in need most (and others) to substandard services of incompetent attorneys.

The legal representation provided to the citizens of Montana is some of the best in the country. On a daily basis, the attorneys at UAZH have the pleasure of working with competent and intelligent attorneys from both the defense and plaintiff's bar. These attorneys work hard in representing their client's interests in a professional and competent manner. UAZH is concerned, however, that the proposed rule changes will severely reduce the quality of services provided to the citizens of Montana. In particular, UAZH is most concerned with the proposed amendment to Rule 11, also referred to as the "ghostwriting" provision.

UAZH agrees with the Ethics Committee's opinion that the proposed amendment to Rule 11 "invites substandard attorney work and increased invalid filings[.]" The rule provides a serious lack of accountability on the attorney writing the document and in UAZH's opinion will allow a lawyer to avoid and ignore his/her responsibilities found in Rule 11 and other sources.

The role of a lawyer is not to serve only as a scrivener. One of the most important aspects of being an effective attorney is providing analysis and discussion on the law and giving honest opinions to clients. Often times those opinions involve telling a client that there is no basis in the law for their claim or their desired motion. However, the proposed rule allows an attorney to skip over the very important task of serving as a counselor at law and becoming only an architect of pleadings. There is no accountability or responsibility for what is filed with the court under the proposed rule. As the Ethics Committee notes, while the proposed changes serve to help a client's "wants", the proposed changes effectively undermines or de-values an attorney's advisor role.

The proposed rule also provides no protection to users of ghostwriters. These ghostwriters may be disbarred attorneys, attorneys who have not been admitted to the Montana bar, or individuals who in fact are not even attorneys but offer such services in conflict to our Professional Rules of Conduct. Because the writer is not required to identify him or herself, there is no ability to regulate these individuals and it may unleash individuals who are not competent to provide such services on an unsuspecting public.

Mr. Ed Smith
Page 3

Moreover, what's to happen if one such attorney is sued for malpractice? May he or she not hide behind these rules in defending such a claim? The litigation might involve issues of what documents or portions of documents the ghostwriter drafted, as well as what advice was given. Other issues would likely arise as well, and as written, these rules will offer some protection to attorneys -- even those who are simply helping their friends and have not utilized limited scope representation to help low income individuals.

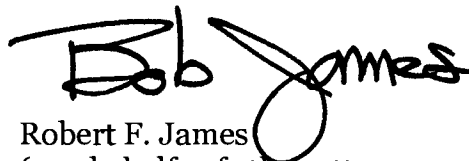
At the very least, the proposed rule should have a provision requiring any would-be ghostwriter to identify himself or herself. This would subject the author to proper regulation by the courts. Other attorneys help in this regulation as well, and without identification of the author as an attorney, that link in the chain of protection is missing. At least full disclosure may provide another layer of protection and would provide some deterrant against meritless litigation and motions.

Of late, our office has been involved in defending a number of pro se cases, some of which we consider to be "recreational litigation" filed for improper purposes having nothing to do with the merits of the case. These litigation tactics clog the justice system with endless motions and thousands of pages of documents. Some of these cases have involved "low income" individuals and a rule allowing anonymous ghostwriters to assist these litigants might only compound the problem and handcuff a court's ability to sanction the person ultimately responsible for vexatious litigation.

In closing, UAZH appreciates and supports the goals of the limited scope representation proposed rules. However, as written, UAZH believes the rules will create more problems than solutions. Thank you for considering our comments on this very important issue.

Sincerely yours,

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.

A handwritten signature in black ink that reads "Bob James". The signature is stylized, with the first name "Bob" written in a cursive-like font and the last name "James" in a more formal, slightly cursive font.

Robert F. James
(on behalf of the attorneys at Ugrin, Alexander,
Zadick & Higgins, P.C.)
rfj@uazh.com